

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3491 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

VINABEN K DAVE

Versus

STATE OF GUJARAT

Appearance:

MR RJ OZA for Petitioner

MS SIDDHI TALATI for Respondent No.1

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 08/10/97

ORAL JUDGMENT

#. The petitioner, by way of this Special Civil Application, begs to challenge decision of respondents to terminate the services of the petitioner as assistant teacher on the ground that respondents No.1 and 2 have not approved her appointment.

#. The respondent No.3-school, at the relevant time, was

receiving 100% grant from the Government. However, now that school has been taken over by the Government. This school is for mentally retarded students. The petitioner, after her name has been sponsored by the employment exchange, was selected for the post of assistant teacher in the respondent No.3 school and she has been given appointment vide order dated 15th June 1981, and in pursuance of this order, the petitioner has joined her services at the school on 3rd July 1981. At that time, the appointment of the petitioner was subject to approval by respondents No.1 and 2 and under the order dated 30th April 1982, that appointment has been approved. At the time of appointment, the petitioner was over-aged, but that appointment was approved by respondent No.2. The petitioner's case is that the respondent No.2 has powers to relax the age eligibility in the case of a candidate who become over-aged. It appears that the name of petitioner has been sponsored by the respondent-school for studies for mentally retarded students at "Society for the Care, Treatment and Training of Children in Need of Special Care", Bombay. She resigned from the services to join that course. Though the parties are at variance on the question whether the petitioner completed that course or not, but that question is not material for the purpose of deciding the present case and as such I am not desisting any more on this question in the judgment. The petitioner was again then given appointment after selection as assistant teacher in the school vide order dated 15th July 1983 and this appointment was also subject to condition of approval by respondent No.2. The temporary approval has been given from time to time as respondent No.2 had sent the matter for relaxation of age eligibility of the petitioner to the State Government. The State Government, under its order dated 4th June 1985 declined to approve the appointment of the petitioner and in pursuance of that order, the respondent No.2 vide its letter dated 25th June 1985 informed to the management of the Institution that as the application for giving age relaxation in respect of the appointment of petitioner has not been accepted by State Government, the services of the petitioner shall stand terminated on expiry of the term of her appointment. In the order dated 4th June 1985, the State Government has given out three grounds not to grant approval to the appointment of the petitioner by giving her age relaxation. First reason has been given that the application for approval has been made after two years of appointment. The date of appointment of petitioner, in this letter has been stated to be of 1983. Another ground has been given that the appointment should have been with prior approval. Third

ground which has been given is that the petitioner's educational qualification and experience cannot be considered to be exceptional which justified any relaxation to be given to her in age eligibility.

#. The learned counsel for the petitioner contended that none of the grounds given in the order aforesaid is tenable. It has next been contended that the previous appointment of the petitioner given to her under the order dated 3rd July 1981 has been approved by respondent No.2 and at that time also she was over aged. Once her appointment is approved, then certainly it goes without say that the respondent No.2 at that time, has considered it to be a case of exceptional qualifications possessed by petitioner. Lastly, the learned counsel for the petitioner submitted that under the order of this Court, the petitioner is working for all these 12 years as before her services can be terminated she has been protected by this Court and now at this stage, if she is asked to go, then she will not be able to get any appointment elsewhere. By now the petitioner has already attained the age of above 50 years.

#. On the other hand, the learned counsel for the respondents contended that the petitioner is not possessing exceptional qualifications and as such, the Government has not committed any error in not approving her appointment. It has next been contended that it is discretion of the Government to grant exemption in the age eligibility or not and for the reasons given in the present case against the petitioner, it cannot be said to illegal or arbitrary. Lastly, the learned counsel for respondents contended that the only fact that the petitioner is working for all these years is hardly of any substance and it is the result of interim relief granted by this Court.

#. I have given my thoughtful considerations to the submissions made by learned counsel for the parties.

#. The respondents No.1 and 2 have not filed reply to the Special Civil Application. However, reply has been filed by school when it was a private school. The two grounds which have been given by respondent No.1 not to approve the appointment of the petitioner are wholly untenable. From record of this case, it is clear that within shortest possible time after the appointment of the petitioner, papers were sent for approval thereof to respondent No.2 and respondent No.2, pending approval of the appointment of the petitioner, granted temporary approval to her appointment. In this case, the

respondent No.2 may not have considered it to be appropriate to exercise itself the powers to relax the age eligibility of the petitioner, and would have sent the matter to the Government, but if some delay was there, then it was on the part of respondent No.2 and the officers of the Government itself. For the inaction or omission on the part of the Government officers, no prejudice can be permitted to be caused to the petitioner. The petitioner is not at fault in any manner whatsoever in sending the papers of approval of her appointment to the Government. So the ground given for non approval of appointment of the petitioner that papers have been sent after two years of appointment is not tenable. Another ground given that appointment could have been made only after prior approval is equally of no substance. It is true that appointment should be made only after prior approval of the Government in private schools but how far the Government is justified in insisting for compliance of this condition is a matter to referred here. I had occasion to deal with many of the cases of appointments of teachers in institutions or private schools receiving grant-in-aid from the Government and in majority of cases, immediately after selection of candidate, he/she is allowed to join post and papers are thereafter send for approval of the appointment. The Government or its officers take long time to give their approval or decline to give approval. This practice of Government is there. The Government should take care to see that appointments are made only after approval of the same either by itself or by competent authority to whom powers have been delegated and in case this practice is really necessitated upon, and it should be, then in majority of cases, litigations may not arise before this Court, or in majority of cases equities may not be created in favour of persons whose appointments have not been approved by the Government or competent officer. But in the case in hand, this ground cannot be permitted to be made a ground for non approval of appointment of the petitioner. If we go by facts of this case, then earlier appointment was given to the petitioner under the order dated 15.6.81 and she has been permitted to join services on 13.7.81, whereas approval to her appointment has been given on 13.7.82. So from the facts of this case itself, it is clear that the practice is otherwise what the State Government is trying to project under the impugned order. Now, I proceed to deal with the last ground given by respondent No.1 in support of non approval of appointment of the petitioner. The respondents' counsel has not produced on record of this case as well as during the course of arguments, any Rule or Regulation of the Government which provides for

relaxation in age eligibility of candidates. However, the learned counsel for respondents does not dispute that this power vests in the Government or the Director to relax the age eligibility in appropriate cases. On what ground the age eligibility is normally to be relaxed is not put on record or otherwise during the course of arguments, but if we go by the order of respondent No.1, it transpires that relaxation in age eligibility is normally done on the ground where a candidate possesses exceptional qualifications. However, the learned counsel for respondents is unable to give out any guidelines laid down by the respondents to consider which are exceptional qualifications in the case of a particular category of employee. The present case belongs to appointment on the post of Assistant Teacher in the school meant for mentally retarded students and what would have been and should have been the exceptional qualification of such teacher is a question which remains unexplained and unanswered by respondents. However, when the earlier appointment was given to the petitioner under the order dated 15th June 1981, the petitioner was over aged and that appointment has been approved by respondent No.2 under its order dated 30th April 1982. In this order, it has not been mentioned on what ground relaxation has been granted to the petitioner in age eligibility, but the fact remains that this appointment has been approved. Thereafter the petitioner has atleast acquired two things, one is the experience of teaching the mentally retarded students at the very school and second is that she got diploma in the special teaching of mentally retarded children from the Society for the Care, Treatment & Training of Children in Need of Special Care. The petitioner has been sponsored for this training by school itself and it is a different matter that she may not have been permitted to complete studies at Government expenses and she has to resign from services, but that fact that she has been sponsored by the school is without any dispute. The respondents disputed that the petitioner has not completed the course, but a certificate has been produced by petitioner, of completion of that course and the same has not been disputed. In view of these two additional factors, coupled with another fact that the petitioner is now in service for all these twelve years may be under the Court's order, it is a fit case where the respondent-State should reexamine the matter of relaxation of age eligibility of the petitioner for giving approval to her appointment which has been given to her under the order date 15th July 1983. In the result, this Special Civil Application is allowed and the order of respondents No.1 and 2 dated 4.6.85 and 25.6.85

respectively are quashed and set aside. Similarly, the order of the school, if any, passed for termination of services of the petitioner is also quashed and set aside. The respondent-State is directed to reconsider the matter of relaxation of petitioner's age eligibility for approval of her appointment to the post of Assistant Teacher and while considering that matter, the respondent-State shall keep in mind the observations made by this Court in this judgment.

#. Before parting with the judgment, I consider it to be appropriate to notice one important aspect in the matter. In the impugned order of the State Government, age relaxation has not been granted to the petitioner on the ground that her appointment has not been made with prior approval of the Government. As observed in earlier part of the judgment, there is a vast difference in saying and in practice. Practice is that the schools, immediately on making appointments of teaching and non teaching staff permit the candidates to join services and on its turn the Government or its officers take long time to grant or refuse the approval to the appointments. The appointments should be given only after approval of the same by the Government or by competent authority. However, how far the State Government insists for this requirement is also a bigger question on which I have my own reservations. However, giving effect to the appointments without prior approval of the competent authority in the grant-in-aid schools have manifold repercussions and one of them is it gives rise to indiscriminate number of litigations before this Court and by passing of time equities in favour of candidates are created. In view of this fact, the State of Gujarat, through the Secretary, Education Department, is directed to issue a Circular to all educational institutions which are receiving grant-in-aid from the Government that no appointment on teaching or non teaching post should be given effect to without prior approval of the Government or competent authority, i.e. candidates should be allowed to join the services only after their appointments are approved by the Government or its competent officer. It is further expected of the Government to see that the matter of approval of appointment of candidates are finally decided within a period of seven days from the date of receipt of the same. Compliance of this order should be reported to this Court.

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(sunil)

